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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/526,577	09/22/2005	Sylvie Pridmore-Merten	112701-597	3814
<div>29157 7590 10/19/2007</div> <div>BELL, BOYD & LLOYD LLP</div> <div>P.O. Box 1135</div> <div>CHICAGO, IL 60690</div>				
EXAMINER				
CLARK, AMY LYNN				
ART UNIT		PAPER NUMBER		
1655				
NOTIFICATION DATE		DELIVERY MODE		
10/19/2007		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PATENTS@BELLBOYD.COM

Office Action Summary

Application No.

10/526,577

Applicant(s)

PRIDMORE-MERTEN ET AL.

Examiner

Amy L. Clark

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 March 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-21 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The abandonment mailed out on 11 September 2007 has been vacated.

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-8 and 17, drawn to a composition comprising an effective amount of an ingredient selected from the group consisting of a molecule that stimulates energy metabolism of the cell and an antioxidant or admixtures thereof in an amount sufficient to improve hair or coat quality of a human or an animal, in an orally acceptable carrier, classified in class 514, subclass 1.
- II. Claims 9 and 12, drawn to a method for the preparation of an orally administrable composition intended to improve hair or coat quality in humans or animals comprising the steps of using a therapeutically-effective amount of an ingredient selected from the group consisting of a molecule that stimulates energy metabolism of the cell and an antioxidant, classified in class 514, subclass 1.
- III. Claims 10 and 18, drawn to a method for the preparation of an orally administrable composition intended to stimulate hair growth in humans or animals comprising the steps of using a therapeutically-effective amount of an ingredient selected from the group consisting of a molecule that

stimulates energy metabolism of the cell and an antioxidant, classified in class 514, subclass 1.

- IV. Claims 11 and 19, drawn to a method for the preparation of an orally administrable composition intended to modulate hair sebum lipid production and/or composition comprising the steps of using a therapeutically-effective amount of an ingredient selected from the group consisting of a molecule that stimulates energy metabolism of the cell and an antioxidant, classified in class 514, subclass 1.
- V. Claims 13 and 16, drawn to a method to improve hair or coat quality of humans or animals, comprising orally administering to the human or animal that requires improved hair or coat quality a composition comprising a therapeutically-effective amount of an ingredient selected from the group consisting of a molecule that stimulates energy metabolism of the cell and an antioxidant, classified in class 514, subclass 1.
- VI. Claims 14 and 20, drawn to a method to stimulate hair growth in humans or animals, comprising orally administering to the human or animal a composition comprising a therapeutically-effective amount of an ingredient selected from the group consisting of a molecule that stimulates energy metabolism of the cell and an antioxidant, classified in class 514, subclass 1.
- VII. Claims 15 and 21, drawn to a method to modulate hair sebum production and/or composition, comprising orally administering to an individual a

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composition comprising a therapeutically-effective amount of an ingredient selected from the group consisting of a molecule that stimulates energy metabolism of the cell and an antioxidant, classified in class 514, subclass 1.

The inventions are distinct, each from the other because of the following reasons:

Inventions II and I, Inventions III and I, and Inventions IV and I are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make another and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case, the product as claimed can be made by another and materially different process. For example, the methods recited in Groups II-IV only require the use of one ingredient from the group consisting of a molecule that stimulates energy metabolism of the cell and an antioxidant, whereas the composition of claim 1 requires that the composition comprises one or both of the ingredients. Since an admixture of the two ingredients would require a search for a second ingredient not necessarily elected in Groups II-IV, this composition would be made in a different way (mixing two active ingredients together) than the methods preparation recited in Groups II-IV.

Inventions I and V, Inventions I and VI, and Inventions I and VII are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be

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used in a materially different process of using that product. See MPEP § 806.05(h). In the instant case, the product as claimed can be use with another materially different product. For example, the composition can be used in a method of losing weight or of increasing muscle mass.

Inventions II and III, Inventions II and IV, Inventions II and V, Inventions II and VI, Inventions II and VII, Inventions III and IV, Inventions III and V, Inventions III and VI, Inventions III and VII, Inventions IV and V, Inventions IV and VI, Inventions IV and VII, Inventions V and VI, and Inventions V and VII are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different designs, modes of operation, and effects (MPEP § 802.01 and § 806.06). In the instant case, the different inventions are drawn to distinct and unrelated methods.

Restriction for examination purposes as indicated is proper because all these inventions listed in this action are independent or distinct for the reasons given above and there would be a serious search and examination burden if restriction were not required because one or more of the following reasons apply:

- (a) the inventions have acquired a separate status in the art in view of their different classification;
- (b) the inventions have acquired a separate status in the art due to their recognized divergent subject matter;
- (c) the inventions require a different field of search (for example, searching different classes/subclasses or electronic resources, or employing different search queries);
- (d) the prior art applicable to one invention would not likely be applicable to another invention;
- (e) the inventions are likely to raise different non-prior art issues under 35 U.S.C. 101 and/or 35 U.S.C. 112, first paragraph.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a invention to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse. Traversal must be presented at the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of right to petition under 37 CFR 1.144. If claims are added after the election, applicant must indicate which of these claims are readable on the elected invention.

If claims are added after the election, applicant must indicate which of these claims are readable upon the elected invention.

Should applicant traverse on the ground that the inventions are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

This application contains claims directed to the following patentably distinct species:

Group I:

First, Applicant must elect from within claim 1 one ingredient or a combination of ingredients. If Applicant elects a combination of ingredients from claim 1, then Applicant should elect the following:

Specie A: Elect claims 1-3, one form of the composition from either claim 4 or 5, and further elect one use of the ingredients from either claim 6 or 7.

Applicant must further elect from within each of the following subspecies:

i.) Elect one ingredient from claim 2. If Applicant elects carnitine, then claim 8 will also be examined; **and further elect from within ii.)**

ii.) Elect one ingredient from claim 3.

If Applicant elects one ingredient from claim 1, then elect from the following:

Specie B: Elect claims 1, 2, one form of the composition from either claim 4 or 5, and further elect one use of the ingredients from either claim 6 or 7; **and**

i.) Elect one ingredient from claim 2; **or elect**

Specie C: Elect claims 1, 3, one form of the composition from either claim 4 or 5, and further elect one use of the ingredients from either claim 6 or 7; **and**

i.) Elect one ingredient from claim 3.

The species are independent or distinct because claims to the different species recite the mutually exclusive characteristics of such species. In addition, these species are not obvious variants of each other based on the current record.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1, 9, 10, 11, 13, 14 and 15 are generic.

There is an examination and search burden for these patentably distinct species due to their mutually exclusive characteristics. The species require a different field of search (e.g., searching different classes/subclasses or electronic resources, or employing different search queries); and/or the prior art applicable to one species would not likely be applicable to another species; and/or the species are likely to raise different non-prior art issues under 35 U.S.C. 101 and/or 35 U.S.C. 112, first paragraph.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

The election of the species may be made with or without traverse. To preserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the election of species requirement, the election shall be treated as an election without traverse. Traversal must be presented at the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of right to petition under 37 CFR 1.144. If claims are

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added after the election, applicant must indicate which of these claims are readable on the elected species.

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the species unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other species.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amy L. Clark whose telephone number is (571) 272-1310. The examiner can normally be reached on 8:30am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on (571) 272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Amy L. Clark
AU 1655

Amy L. Clark
October 12, 2007


MICHELE FLOOD
PRIMARY EXAMINER